United States Court of Appeals

for the Second Circuit

APPENDIX

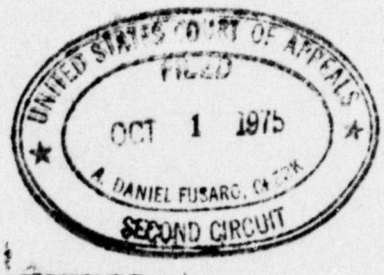
75-1315

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
P/S

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff-Appellee, -against- RANDY WILLIAM BROWN, Defendant-Appellant.	DOCKET NO. 75-1315

APPENDIX TO APPELLANT'S BRIEF



ARTHUR V. GRASECK, JR.
Attorney for Defendant-Appellant
70 Davis Road
Port Washington, New York 11050

PAGINATION AS IN ORIGINAL COPY

APPENDIX

D. C. Form No. 100

CRIMINAL DOCKET

75CR 93

MISHLER, J.

TITLE OF CASE	ATTORNEYS
PEOPLE OF THE STATE OF NEW YORK ~~THE UNITED STATES~~ vs. RANDY WILLIAM BROWN	For U.S.: CLOSED
	For Defendant:

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED			
			DATE	NAME	RECEIVED	DI
Fine,			7-18-75	Notice of Appeal	5 -	
Clerk,			7-21-75	Paid to Treas		
Marshal,						
Attorney,						
Commissioner's Court,						
Witnesses,						

DATE	PROCEEDINGS
2-4-75	Petition for Removal filed on Indictment No. 475-74 pending in the U.S. County Court, Suffolk County, Riverhead, N.Y. pursuant to Title 28, U.S.Code, Sec. 1443
2/6/75	Certificate of Service filed
5/1/75	Notice of motion to remand case to state court and memorandum of la support of motion filed ret. 5/16/75
5-16-75	Before MISHLER, CH J - case called - motion to remand adjd to June 6, 1975 (Arthur Graseck,Jr. 767-2436)
6-5-75	Defts Memorandum of Law filed in opposition to pltffs motion to remand
6-6-75	Before MISHLER, CH J - case called - motion to remand submitted.
7/2/75	By MISHLER, CH.J.-Memorandum of Decision and Order filed that motion to remand action to County Court is granted

75CR 93

DATE	PROCEEDINGS
7-18-75	Notice of Appeal filed.
7-18-75	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals
8-4-75	Exhibits A through U filed.

A TRUE COPY ATTEST
8/11/75
LEWIS ORGEL, CLERK
BY [illegible] DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -

75 CR 93

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

RANDY WILLIAM BROWN,

Defendant.

Memorandum of Decision and Order

July 1, 1975

- - - - - - - - - - - - - - - - - - -

MISHLER, CH. J.

The State of New York moves for an order pursuant to 28 U.S.C. §1447(c) remanding this action to County Court, Suffolk County, New York, on the ground that the action was removed to this court improvidently.

Defendant was originally charged in Suffolk County with assault in the second degree, obstructing governmental administration and resisting arrest. He filed

a petition for removal, pursuant to 28 U.S.C. §1443,[1] alleging that he could not receive a fair trial in Suffolk County because the courts and other governmental officials in the county are prejudiced against persons who have been charged with assaulting a police officer and raise claims of their own of police brutality. Counsel for defendant filed an omnibus motion in County Court seeking, among other items of relief, personnel files and other information

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[1] § 1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

Defendant does not specify whether he seeks to remove under paragraph (1) or (2) of this section. However, it is clear that paragraph (2) is inappropriate for that subsection "is limited to federal officers and those acting under them," City of Greenwood, Mississippi v. Peacock, 384 U.S. 808, 86 S.Ct. 1800 (1966).

concerning the police officer who allegedly abused the defendant. Discovery of these items was denied in an order signed by Judge Melvyn Tanenbaum on the ground that they were exempt property as defined in §240.10(3) of the New York Criminal Procedure Law (CPL). Defendant now states that the conduct of the police officer was racially motivated in violation of defendant's rights under 18 U.S.C. §242[2] and 42 U.S.C. §1981,[3] but that he is denied the enforcement of these rights by the County Court's

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[2] §242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term or years or for life.

[3] §1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

reliance on the CPL exempt property provision.[14]

The requirements for removal of a criminal proceeding pursuant to 28 U.S.C. §1443 were set forth by the Supreme Court in State of Georgia v. Rachel, 384 U.S. 780, 86 S.Ct. 1783 (1966), and its companion case, City of Greenwood, Mississippi v. Peacock, 384 U.S. 808, 86 S.Ct. 1800 (1966). The Court held, first of all, that the right which a petitioner relies upon for removal must be derived from a "law providing for specific civil rights stated in terms of racial equality." State of Georgia v. Rachel, supra, 384 U.S. at 792, 86 S.Ct. at 1790. This is the Court's construction of the phrase in the statute "any law providing for the equal civil rights of citizens," and it specifically limits the availability of removal. Rights claimed under the due process clause of the fourteenth amendment or under other amendments which provide the elements of a fair trial will not suffice for removal because they are "of general application available to all persons or citizens," and not directed specifically at racial equality. Id.; People of State of New York v. Galamison, 342

[14] Section 240.20(3) of the CPL is the specific provision which prohibits discovery of exempt property.

F.2d 224 (2d Cir. 1965). To meet this requirement defendant alleges that the conduct of the police officer involved was racially motivated in contravention of defendant's rights under 42 U.S.C. §1981, a statute which has been held to be stated in terms of equal civil rights. City of Greenwood, Mississippi v. Peacock, supra; State of Louisiana v. London, 335 F. Supp. 585 (E.D. La. 1971). However, the specific right which defendant is seeking to enforce on removal is his right to a fair trial. The alleged impossibility of receiving a fair trial in the State court may be grounded in racial prejudice, but, nevertheless, the denial of that right will not support removal. The right to a fair trial is a right of general application not a right of racial equality. At most, defendant is making a due process claim in his alleged inability to get a fair trial. See State of Georgia v. Spencer, 441 F.2d 397 (5th Cir. 1971). Had defendant brought his own action in Suffolk County against the police officer under 42 U.S.C. §1981, removal might well have been warranted, for in that case, defendant would be seeking to enforce a specific equal right. Under the circumstances presented here, defendant has not satisfied the first requirement for removal.

Defendant is also unable to meet the second requirement for removal, as stated in Rachel (384 U.S. at 800, 86 S.Ct. at 1794):

> Removal is warranted only if it can be predicted by reference to a law of general application that the defendant will be denied or cannot enforce the specified federal rights in the state courts.

Defendant claims that he is being prevented from enforcing his rights in the state court by the County Court's interpretation of exempt property under CPL §240.10(3). Because discovery of this material is not being permitted under CPL §240.20(3), defendant alleges that he will be unable to enforce his right to a fair trial. Yet, these sections of the CPL do not operate to deprive defendant of any of his civil rights, be they stated in terms of racial equality or otherwise. The provisions simply set out the parameters of discoverable material in a criminal proceeding in New York.

Ultimately, defendant's position is most similar to that taken by the petitioner in City of Greenwood, Mississippi v. Peacock, supra. There, the persons seeking removal had been charged with various offenses, such as obstruction of a public street, arising out of civil rights

demonstrations and voter registration activity. They argued that they were entitled to removal on the grounds that they were being prosecuted because of their race and they would not be able to receive a fair trial in the state courts. Defendant in this case makes essentially the same allegation. The Court stated that removal in the situation presented in Peacock would go far beyond the intent of the removal statute, Peacock, supra, at 827, 86 S.Ct. at 1812, and would create significant problems for the federal courts, Id. at 832, 86 S.Ct. at 1813. Defendant's basic arguments in support of removal here cannot be distinguished from those put forward in Peacock, i.e., racial motivation for the criminal prosecution and inability to receive a fair trial; removal in this case, therefore, cannot be sustained.

Defendant has been unable to satisfy the requirements for removal of his criminal proceeding. Accordingly, the motion of the State of New York for an order remanding this action to County Court, Suffolk County is granted and it is

SO ORDERED.

Jacob Mishler
U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

THE PEOPLE OF THE STATE OF NEW YORK, :

Plaintiff, :

- against - :

RANDY WILLIAM BROWN, :

Defendant. :

----------X

75CR 93

NOTICE OF REMOVAL

(Indictment No. 475-74)

TAKE NOTICE that a verified petition for removal of the above entitled action from the County Court, Suffolk County, Riverhead, New York to the United States District Court for the Eastern District of New York, together with supporting data, copies of which are annexed hereto, was filed on February 4, 1975, in the United States District Court for the Eastern District of New York.

Dated: Port Washington, New York
February 4, 1975

Arthur V. Graseck Jr.

ARTHUR V. GRASECK, JR.
Attorney for Defendant
Office and P.O. Address
70 Davis Road
Port Washington, New York 11050
Telephone No. (516) 767-2486

TO: CLERK OF THE COUNTY COURT
SUFFOLK COUNTY
Criminal Courts Building
County Center
Riverhead, New York 11901

CLERK OF THE UNITED STATES
DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK
Brooklyn, New York

HON. HENRY F. O'BRIEN
District Attorney of Suffolk County
Criminal Courts Building
County Center
Riverhead, New York 11901

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

THE PEOPLE OF THE STATE OF NEW YORK, :

Plaintiff, :

- against - : PETITION FOR REMOVAL
Indictment No. 475-74

RANDY WILLIAM BROWN, :

Defendant. :

----------X

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK:

The petition of Arthur V. Graseck, Jr., attorney for defendant, Randy William Brown, respectfully shows:

1. On or about Saturday, April 27, 1974, defendant was arrested by officers of the Suffolk County Police Department at or about 1:40 P.M. and charged with Resisting Arrest, Obstructing Governmental Administration, Robbery in the third degree and Assault in the second degree. The misdemeanor informations and felony complaint are annexed hereto as Exhibit "A", "B" and "C".

2. On or about May 20, 1974, defendant was indicted by a Grand Jury of Suffolk County and charged with Assault in the second degree, Obstructing Governmental Administration and Resisting Arrest. The indictment is annexed hereto as Exhibit "D".

3. On June 11, 1974, an omnibus motion was filed on behalf of defendant; among the items of relief sought, were information relating to the identity of the police officers present at the scene of the arrest and the background of arresting officer Carmody, including alleged prior acts of misconduct. A copy of the motion papers is annexed hereto as Exhibit "E".

4. On or about August 16, 1974, the Hon. Melvyn Tanenbaum, Suffolk County Judge, denied defendant's motion in all respects except that he ordered delivery to him of any statements made by the defendant which might come into the possession of the District Attorney and provision of some of the particulars demanded in the motion papers. A copy of the order is annexed hereto as Exhibit "F".

5. This is a criminal action which may be removed to this Court by the petitioner, defendant herein, pursuant to the provisions of Title 28, United States Code, Sections 1441 and 1443 et seq., in that the petitioner has been denied and cannot enforce in the courts of the State of New York his rights under the Penal Law of the State of New York because the courts of Suffolk County and the government officers charged with the enforcement of the Penal Law of the State of New York in that County have such prejudice against persons charged with assaults on police officers, who complain of being abused by police that it will be impossible for petitioner to receive a fair trial on the charges contained in the indictment, annexed hereto as Exhibit "D".

6. Defendant is one of a number of individuals who have been physically abused by police officers in Suffolk County, only to be confronted by a system which seems to reflect official condonation of such misconduct. There is no effective machinery in Suffolk County for dealing with police brutality, and such conduct is not significantly discouraged. It appears that a complaint against a police officer is more likely to lead to the lodging of a criminal charge against the complainant, than to any reforms of police practices. Please see Suffolk County District Court papers in People vs. Anthony Maida (Docket No. 756-74), People vs. Arthur Stevenson (Docket No. 6902-73) and People vs. Alfred Dombroski (Docket No. 11593-74) annexed hereto as Exhibits "H", "I" and

"J". The latter cases are ~~one~~ examples of the practice in Suffolk County pursuant to which a complaint against police directly results in a charge being lodged against the complainant. As indicated by the affidavits of Thomas Harrison and Daniel Sheevers, annexed hereto as Exhibits "K" and "L", a person victimized by the improper use of police force, often finds himself charged with such crimes as those on which defendant is to be tried.

7. Annexed hereto as Exhibits "M" through "Q", are affidavits by Paul Gianelli, Esq., William Crite, Bruce Jimmerson, Charles Jaynes and Chester Mills, which indicate the degree to which the Police Department's Legal and Inspection Bureau, the District Attorney's office and the Grand Jury have either ignored complaints of police brutality, or purported to undertake investigations, but have, in fact, looked into the incidents complained of in such an incomplete or biased manner as to demonstrate a total disregard for the victims of such abuse. It is noteworthy that incidents affecting the Burches (please see the affidavits submitted to this Court in Coleman vs. Klein, 73 c. 1857, annexed hereto as Exhibits "R" and "S"), Bruce Jimmerson, Thomas Harrison and Daniel Sheevers, also involved Officer Carmody.

8. The defendant is a victim of alleged police brutality, as well as the target of pending charges lodged against him, which accusations, if true, would tend to justify the use of force.

9. The prior history of police officials, governmental authorities and the Courts of Suffolk County, regarding the handling of complaints of police brutality and their attitude toward those making such accusations leads to the conclusion that this case must be removed to the United States Court, to enable defendant to be afforded a fair trial. For one example of judicial hostility to such a complaint, please see the transcript in the case of People

vs. Dale Richardson, annexed hereto as Exhibit "T".

10. It appears, from the statements annexed hereto that a police officer is virtually immune from indictment and conviction for brutality in Suffolk County. Thus, any administrative proceedings within the Department and their results are, in a sense, the equivalent for policemen of the criminal justice system as applied to other citizens. Just as a defendant's criminal conviction can be learned of, and inquired into, by the District Attorney, on the issue of credibility, a police officer's past record should be subject to comparable use by the defense counsel.

11. In addition, those who complain of police misconduct and persons involved with them are subject to intimidation in Suffolk County. Please see the affidavit of Helen P. Ackley, annexed hereto as Exhibit "U" and the Burch affidavits, annexed hereto as Exhibits "R" and "S". Moreover, on information and belief, defendant herein, was harassed by Officer Carmody on June 6, 1974. Because of the practice of intimidation, defendant's witnesses might be reluctant to appear on his behalf in Suffolk County Court.

WHEREFORE, defendant, Randy William Brown, prays that this action, now pending against him in the Suffolk County Court, Riverhead, New York, be removed to this Court and proceed as a matter properly removed thereto.

Dated: Port Washington, New York
February 4, 1975

Arthur V. Graseck Jr.

ARTHUR V. GRASECK, JR.
Attorney for Defendant-Petitioner
Office & P.O. Address
70 Davis Road
Port Washington, New York 11050
Telephone No. (516) 767-2486

TO: Clerk of the County Court
Suffolk County
Riverhead, New York

Clerk of the UNITED STATES DISTRICT COURT
For The Eastern District Of New York
225 Cadman Plaza East
Brooklyn, New York 11201

TO: (Cont'd)
Hon. Henry F. O'Brien
District Attorney of Suffolk County
Criminal Courts Building
County Center
Riverhead, New York 11901

COUNTY COURT : COUNTY OF SUFFOLK
STATE OF NEW YORK

----------X

THE PEOPLE OF THE STATE OF NEW YORK, :

Plaintiff, :

- against - : Indictment No. 475-74

RANDY WILLIAM BROWN, :

Defendant. :

----------X

Omnibus Motion For:

1. Order Suppressing Evidence;
2. Order Directing Production of Copy of Confession and Suppressing It;
3. Order For Discovery of Witnesses and For Production of Brady Material;
4. Order For Bill of Particulars;
5. Order Suppressing Identification;
6. Order Permitting Inspection of Grand Jury Minutes Or Dismissing the Indictment;
7. Order releasing defendant on his own recognizance.

Motion Returnable on the 25th of June , 1974.

At County Court, Part I, Riverhead, NEW YORK

ARTHUR V. GRASECK, JR.
Attorney for Defendant
70 Davis Road
Port Washington, New York 11050
516 767-2486

Exhibit E

COUNTY COURT : COUNTY OF SUFFOLK
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, :

- against - : NOTICE OF MOTION
INDICTMENT NO. 475-74

RANDY WILLIAM BROWN, : DN-LC

Defendant. :

S I R S :

PLEASE TAKE NOTICE, that, upon the annexed duly executed affirmation of Arthur V. Graseck, Jr., the affidavit of Randy William Brown , sworn to the 4th day of June , 1974, the indictment and the proceedings heretofore had herein, the undersigned will move this Court, at Motion Term held in the Courthouse, Riverhead , New York, on the 25th day of June , 1974, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an omnibus order granting the defendant:

1. Suppression of any evidence wrongfully seized herein in violation of the Fifth and Fourteenth Amendments to the United States Constitution and/or in violation of provision(s) of the New York State Constitution;

2. A Hearing prior to Trial of the indictment to determine the admissibility at the Trial of any and all written and/or oral statements allegedly made by the defendant and intended to be used by the People at Trial; at the Hearing, defendant will move for suppression of any such statement as having been obtained in violation of Constitutional protections; defendant further demands immediate production of exact copies of any alleged written statements and of a document setting forth the substance of any alleged oral statements;

3. Discovery of the names and addresses of all witnesses whose testimony the District Attorney, or his office, intends to use at the trial of the indictment and production of Brady Material;

4. A Bill of Particulars, setting forth the alleged facts on which the conclusory statements in the indictment are based;

5. Suppression of any illegally obtained identification evidence;

6. Permission to inspect the Grand Jury minutes or, if such right is not afforded defendant, dismissal of the indictment.

7. Release on his own recognizance.

Dated: Port Washington, New York
June 4, 1974 , 1974

Yours, etc.,

ARTHUR V. GRASECK, JR.
Attorney for Defendant
70 Davis Road
Port Washington, New York 11050
516 767-2486

TO: HON. HENRY G. WENZEL, III
DISTRICT ATTORNEY OF SUFFOLK COUNTY
Griffing Avenue
Riverhead , New York 11901

Clerk of the Suffolk County Court
Griffing Avenue
Riverhead , New York 11901

COUNTY COURT : SUFFOLK COUNTY
STATE OF NEW YORK
----------X

THE PEOPLE OF THE STATE OF NEW YORK, :

- against - :

RANDY WILLIAM BROWN, :

Defendant. :

----------X

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF NASSAU) SS.:

Arthur V. Graseck, Jr., an attorney duly admitted to practice in the Courts of this State, affirms, under the penalties of perjury, that the statements contained herein are true, except as to those facts stated on information and belief which he believes to be true.

1. That he is the attorney for defendant, Randy William Brown , and makes this affirmation in support of an omnibus motion for suppression hearings, production of any alleged inculpatory statements, discovery of witnesses and exculpatory material, a bill of particulars, an identity hearing, and either for inspection of the Grand Jury minutes or for dismissal of the indictment and for defendant's release on his own recognizance.

2. That defendant was indicted on ~~the~~ charges of assault in the second degree, obstructing governmental administration and resisting arrest.

3. That Deponent has been served by the Office of the District Attorney with a notice that it is in possession of a confession or admission from the defendant and also that it intends to offer both such statement and testimony identifying the defendant, by a witness who made a previous identification of him, upon the trial of the issues herein.

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4. That the law requires defendant be afforded a hearing in advance of trial, to determine the voluntariness of any confession or admission. Affirmant demands such a hearing be held and that he be supplied with a true copy of any written statement and a document setting forth the language of any verbal admission, prior to commencement of the hearing.

5. A. That to properly prepare for trial, defendant requires the names and addresses of all prospective witnesses whose testimony is to be used against him. In addition the names and badge numbers of all police officers present at the scene are requested. Without this information he would be deprived of the same opportunity to investigate the facts and circumstances surrounding the offenses alleged as was available to the District Attorney assisted by the police. To make possible a proper presentation of his case, defendant should be supplied with information which would enable him to make inquiry, as to the facts, of those who have knowledge of the circumstances surrounding the alleged commission of the offenses charged.

5. B. Brady Material

(1) The defendant moves this Court to grant an Order compelling the Prosecution to disclose to the defendant, and, in the case of any books, papers, reports, testimony, statements, photographs including all mug shots, or other tangible items, to produce and deliver for inspection and copying by the defendant, all evidence in the possession, custody or control of the Prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the Prosecution. This motion is made under the authority of Brady v Maryland, 373 U.S. 83.

(2) Defendant seeks all evidence which may be favorable to him, in that it is material to the issue of guilt or punishment, bears upon and could reasonably weaken or affect any evidence proposed to be introduced against the defendant by the Prosecution, relates in any material degree to any of the charge counts contained in the indictment, is relevant to the subject matter of the indcitment and prosecution under it or, in any manner, may aid the defendant in the ascertainment of the truth.

(3) Very often, in cases such as the one at Bar, there are a number of witnesses who furnished statements to the Prosecution which are favorable to the defendant, but who may not be called at the time of the trial of the matter. The statements of those witnesses should be turned over to the defense at this juncture, so that any such witnesses might be interviewed by defense counsel in order to determine, in advance of trial, whether they should be called on behalf of the defendant. *Please see page behind for additional information.

(4) If this material is not supplied until the time of the trial, which may be completed in a very short time, it might be too late to properly put to use any newly discovered material, and the adequate presentation of the defendant's case could be jeopardized.

6. The interests of justice are served by eliminating or reducing the element of surprise at trial. Under Rule 26 (b) of the Federal Rules of Procedure, it is expressly provided that discovery may be had concerning the "identity and location of the persons having knowledge of relevant facts." The purpose of this provision is to allow all parties equal access to the relevant facts and to make it possible for them to obtain the names of trial witnesses. Your affirmant feels that the same reasoning should be adopted in the State Courts and especially in criminal matters where the consequences of conviction (including possible imprisonment) are, in affiant's opinion, more serious than an adverse determination in a civil matter. The policy considerations which have resulted in the granting of pre-trial discovery of statements of a defendant, which the District Attorney intends to use against him, apply with the same force to the names and addresses of witnesses. The Federal Rule has been incorporated in Article 240.20 of the Criminal Procedure Law. Furthermore, the arresting officer may have relied upon memoranda to prepare a complaint on the aforesaid charges. On information and belief, such notes are

* Specifically included in the requested material are the personnel file of police officer Michael E. Carmody, #1635, Squad 2, Command 6510 and all files of the Suffolk County Police Department's Legal and Inspection Bureau in which he is named or which otherwise relate to him. This demand is based on reliable information received from attorneys, the Suffolk County District Attorney's Office and others indicating that Patrolman Carmody makes a practice of engaging in illegal conduct, particularly in his dealings with members of minority groups and of using his official position to give his criminal activities the appearance of legality. In addition, on information and belief, he has openly attempted to intimidate persons, including an attorney, who were attempting to assist individuals who were the main targets of his misconduct.

essential for the proper preparation of defendant's case. People v. Black, 268 N. Y. S. 2d 275 (1966).

7. Affirmant demands that the allegations of the indictment be particularized as follows:

A. Supply the exact time when and the precise location at which each of the offenses was allegedly committed;

B. List the areas of Michael Carmody's body, e.g. hand, arm, leg which were (1) swollen; (2) lacerated.

C. State facts demonstrating defendant intended to prevent a peace officer from performing a lawful duty.

D. Set forth facts showing that the administration of law was intentionally obstructed, impaired or perverted by defendant.

E. Supply facts in support of the allegation that defendant intended to resist an authorized arrest.

F. Make clear what lawful duty or official function was being performed by Officer Carmody.

G. State the name of the person whose license and registration were allegedly being checked.

H. Set forth the words spoken in advising defendant that he was under arrest.

I. Indicate whether the crimes alleged constituted separate transactions; list the sequence in which the offenses were committed and the length of time which elapsed between commission of each of them.

8. On information and belief, the evidence presented to the grand jury was insufficient in law to warrant the return of the indictment. Specifically, it is contended that there was no competent evidence presented to the grand jury implicating the defendant in the crimes alleged. It appears that reliance was

placed on testimony of Patrolman Carmody. The office of the District Attorney has reason to know of the unreliable nature of such testimony.

It is requested, that upon the reading of the transcript of the minutes of the Grand Jury, the entire indictment be dismissed or that the Court dismiss any count thereof as invalid in law and unsupported in fact. It is submitted that any evidence presented to the Grand Jury relating to defendant is insufficient, and the indictment violates his constitutional rights. Affiant urges, in the alternative, that defendant be permitted to inspect the Grand Jury minutes.

9. That clearly, none of the relief sought will be improperly injurious to the Peoples' case or misused by defense counsel. All of the relief sought is essential to the proper presentation of the defendant's case.

10. That no previous application for the relief requested has been made.

WHEREFORE, it is respectfully requested that an order be made releasing defendant on his own recognizance, directing the District Attorney of the County of Suffolk to permit the defendant, or his representatives, to inspect the minutes of the Grand Jury, which presented to the Court the indictment herein, and/or, in the alternative, directing dismissal of the indictment on the ground that it is contrary to the law, invalid and in violation of the constitutional rights of the defendant, in that it was not based upon sufficient or adequate evidence; and that the other relief requested be granted.

Dated: Port Washington, New York
June 4, 1974

ARTHUR V. GRASECK, JR.

COUNTY COURT OF THE COUNTY OF SUFFOLK

----------x

THE PEOPLE OF THE STATE OF NEW YORK,

- against - AFFIDAVIT

RANDY WILLIAM BROWN,

Defendant.

----------x

STATE OF NEW YORK)
COUNTY OF SUFFOLK) SS:

RANDY WILLIAM BROWN, being duly sworn, deposes and says:

1. Affiant is the defendant named in this indictment.

2. Deponent entered a not guilty plea to the charges.

3. After his arrest he was beaten by Patrolman Carmody.

4. In support of his application for release on his own recognizance defendant submits that he is 29 years of age, has no convictions and served between August, 1969 and May, 1973 as a Washington, D. C. police officer. He testified before the Grand Jury and is anxious to assert his right to a trial. Defendant resides in Amityville and will appear in Court regardless of his bail status.

5. Deponent respectfully submits to this Court that his Constitutional rights were violated; therefore, in order to secure a fair trial and to permit his counsel to prepare a proper defense, he supports this application to discover any evidence exclusively in the possession of the police, the District Attorney or any other law enforcement agency, which may be favorable or helpful to the defendant, to limit the proof in the interests of justice, by a verified bill of particulars, to suppress any evidence, including any written and oral statements, not obtained constitutionally and for all other relief essential for deponent's defense.

RANDY WILLIAM BROWN

Sworn to before me this
4th day of June, 1974

Notary Public

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SHORT FORM ORDER

INDEX: INDICTMENT NO. 475 19 74

COUNTY SUPREME COURT – STATE OF NEW YORK

TRIAL SPECIAL TERM, PART 1. – SUFFOLK COUNTY

Present: Hon. MELVYN TANENBAUM Judge

MOTION DATE June 28, 19 74

MOTION NO.

TRIAL CAL. NO.

THE PEOPLE OF THE STATE OF NEW YORK

-against-

RANDY WILLIAM BROWN, Defendant.

PLTF'S ATTY:
HON. HENRY G. WENZEL, III
Suffolk County District Attorney
TIMOTHY J. MATTIMORE, ESQ.
of Counsel
Griffing Avenue, Riverhead, N.Y.

DEFT'S ATTY:
ARTHUR V. GALLECK, JR., ESQ.
70 Davis Road
Port Washington, New York 11050

The following papers numbered 1 to 6 read on this motion by defendant for Omnibus Relief

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause — Affirmation & Affidavit	1,2,3
Answering — Affirmation	4
Replying Affidavits and Affirmation	5,6
Affidavits	
Filed Papers	
Pleadings-Exhibit-Stipulation	
Briefs: Plaintiff's/Petitioner's — Defendant's/Respondent's	

The defendant, charged in indictment #475-74 with the crimes of Assault in the Second Degree, Obstructing Governmental Administration and Resisting Arrest, makes this Omnibus Motion determined as follows:

(1) That branch of the motion that seeks an order supressing seized evidence is denied as moot, by virtue of the representation of the People that there was no tangible evidence seized.

(2) a. That branch of the motion seeking production of copies of confessions; Denied in part, by reason that in response thereto

Dated: J.S.C.

Exhibit F

PEOPLE v. RANDY WILLIAM BROWN ORDER

Indictment #475-74

the People represent that there are no written or recorded statements or confessions made by the defendant. Granted to the extent of requiring the People to deliver any written or recorded statements or confessions made by the defendant which may now or hereafter come into possession or control of the District Attorney within 10 days thereof.

b. That branch of the motion seeking a Huntley Hearing is denied as moot.

(3) a. An order for Discovery of witnesses is denied. The defendant is not entitled to pre-trial discovery of the names of witnesses. (People v. Hyzid, 70 Misc 2d 654; Matter of Vergari v. Kendall, 76 Misc 2d 848).

b. Brady material is denied. This obligation is imposed on the People at all times, and is explicitly acknowledged by them. Under the mandate of Brady v. Maryland, 373 U.S. 83, 87, "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution", and no order is required to force compliance by the District Attorney.

(4) That branch of the motion seeking a Bill of Particulars setting forth:

a. Time and place is granted to the extent that the People have furnished same in the body of their Affirmation in

PEOPLE v. RANDY W. BROWN ORDER

Indictment #475-74

Opposition.

b. A list of the injuries of the officer; granted.

c. The name of the person whose license and registration were allegedly being checked; Granted.

d. Whether the crimes alleged constitute separate transactions and the statement of the words or substance of the statement made to the defendant advising him that he was under arrest; Granted. All other parts of this branch of the motion are denied on the grounds that sufficient information is recited in the indictment (CPL §200.90(2)).

(5) That branch of the motion that seeks a Suppression of identification evidence is denied under the representation of the People that no Identification evidence in the form of line-up, show-up, photographs or otherwise was used.

(6) That branch of the motion seeking an Inspection of the Grand Jury Minutes. There is no provision in the CPL authorizing an inspection of the Grand Jury Minutes by the defendant (Proskin v. County Court of Albany County, 30 N.Y. 2d 15). However, the Court will view this motion as a motion pursuant to CPL §210.30 for the Court's inspection of the Grand Jury minutes. The Court has read the minutes of the Grand Jury Proceedings and finds that said Proceedings have been conducted within the constitutional and statutory framework provided therefor and the evidence therein is sufficient to support the indictment.

PEOPLE v. RANDY W. BROWN ORDER

Indictment #475-74

(Miranda v. Isseks, 41 AD 2d 176). Accordingly, the motion to dismiss the indictment is denied.

(7) That branch of the motion seeking a release of the defendant in his own recognizance is denied. The defendant's moving papers fail to set forth any new or additional facts that would cause this Court to modify the prior order setting bail.

(8) That branch of the motion that seeks the personnel file of Officer Michael Carmody and all files of the Suffolk County Police Department's Legal and Inspection Bureau is denied as Exempt Property (CPL §240.20(3)).

(9) That branch of the motion that seeks Inspection of Memoranda of the arresting officer is denied as Exempt Property (CPL §240.20(3)).

SO ORDERED.

Dated. August 16, 1974

J.C.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,	:	
Plaintiff,	:	
- against -	:	AFFIDAVIT IN SUPPORT OF PETITION FOR REMOVAL
RANDY WILLIAM BROWN,	:	(Indictment No. 475-74)
Defendant.	:	

STATE OF NEW YORK)
COUNTY OF SUFFOLK) SS.:

Paul Giannelli, an attorney duly admitted to practice law in the State of New York, hereby affirms under penalties of perjury, as follows:

During 1971, I was associated with Alfred S. Koffler, an attorney retained to represent Bruce Jimmerson, who was charged with unauthorized use of a motor vehicle and assault in the second degree as a result of an incident involving Suffolk County Police Department Patrolman Michael Carmody and which occurred on February 20th, 1971.

During our investigation, it was learned through a totally disinterested witness, and others, that the police used excessive force in effectuating the arrest, as well as after the arrest had been accomplished.

According to the witness, Jimmerson was thrown to the ground and beaten with blackjacks after he had attempted to run from the officers and had stopped when ordered to do so by police officers. Witnesses also reported that one officer struck Carmody by mistake, the blow having been intended for Jimmerson.

After it was decided that Jimmerson would testify before the Grand Jury, I transported him and the witness, a former employee of the Federal Bureau of Investigation, to Riverhead on four separate occasions--April 26th, May 11th, June 3rd and June 22nd, 1971. It was unclear to me why the matter was repeatedly postponed.

On or about April 26th, 1971 I spoke with John Faye who was then Chief of the Indictment Bureau of the Suffolk County District Attorney's office. He has since been elevated to a judicial position. I advised him of the results of our investigation and the quality of the evidence--(i.e. a disinterested witness to unprovoked physical abuse by police officers directed at Jimmerson). Mr. Faye responded to these allegations by leading me to believe that given credible testimony the official status of an individual would in no way immunize him from Grand Jury action. At least on one occasion the presentment of the case was postponed by Mr. Faye, who indicated he would broaden the investigation as a result of the facts disclosed by our investigation. At one point it was suggested by Mr. Faye that he would call upon a police inspector to aid him in looking into the physical abuse of Jimmerson observed by the several witnesses.

The witness, who had been associated with the F. B. I., took her young child along when she traveled to Riverhead on four occasions. She experienced considerable inconvenience; but traveled repeatedly to Riverhead. She expressed indignation over what she saw the police do to Jimmerson on the morning of his arrest.

The matter was finally presented to the Grand Jury after three adjournments. The result of this entire investigation was that Jimmerson was indicted and no action either by indictment or report was taken with respect to the actions of the police. Unlike the felony complaint, filed at about the time of the incident, the indictment included an unambiguous allegation of an assault by Jimmerson directed at and causing injury to Carmody. The language of the indictment clearly conflicted with the account of the incident which I had received from several witnesses, including the former F. B. I. employee.

I can conclude that the Suffolk County Grand Jury, or those who determine the facts it hears, act in a manner which insulates public officers from the even handed application of the criminal justice system.

I felt that the independent evidence in the case was so strong and convincing that this conclusion is inescapable and could apply in general to such cases.

Thereafter, I never advised a client to have evidence presented to a Grand Jury for its consideration.

Dated: Hauppauge, New York
November 15, 1974

Paul Gianelli

PAUL GIANELLI

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

RANDY WILLIAM BROWN,

Defendant.

AFFIDAVIT IN SUPPORT OF PETITION FOR REMOVAL
(Indictment No. 475-74)

STATE OF NEW YORK)
COUNTY OF SUFFOLK) SS.:

Bruce E. Jimmerson, being duly sworn, deposes and says:

I am a black resident of Wyandanch, Suffolk County, New York, and I was born on September 25, 1954.

On or about February 23, 1971 I was arrested by Suffolk County Police officers as a result of having driven a car which I did not own. I had been riding in the automobile with a friend who said that the car belonged to his brother. He later asked my permission to leave the car by my family's house, and I agreed. On reflection, I decided that the car had been stolen, that was why he wanted to leave it near my home and I drove it toward my friend's house.

En route, I was followed by policemen, panicked, ran from the car and was caught by the officers.

I was severely beaten by them and they directed racial epithets at me. Black jacks and billy clubs were used as weapons against me, after I had been ordered to freeze, did so, was thrown to the ground and my arm was stepped on. I had sustained numerous injuries and my vision had been temporarily impaired, when I was taken in the direction of the police car. I then saw a weapon being swung toward my head and ducked to avoid the blow. As a result Patrolman Michael Carmody was struck by a fellow officer, who immediately said, "I'm sorry Mike."

Because of the severe beating, I appeared in Court with obvious injuries. In addition, I could not play basketball and I required medical attention, including that provided by a bone specialist.

Officer Carmody later accused me of cutting him with a knife, even though I was not then and never do carry a knife.

Exhibit O

The incident was witnessed by several persons, including an employee of the Federal Bureau of Investigation. She and I and at least one other witness testified, on my behalf, before the Suffolk County Grand Jury about the beating and, especially, the activities of Patrolman Carmody.

The District Attorney who conducted the Grand Jury proceeding cut me off whenever I testified about the beating I had suffered at the hands of the policemen. He continually urged me to speak only of the alleged car theft. Whenever I spoke of the activities of the police he seemed to turn my words around. I eventually complained that he was trying to make it appear I had said things I had not said, and I was told to leave.

The Grand Jury indicted me and, as far as I know, no action was ever taken against Officer Carmody or any of the other policemen involved in the incident.

After this case was disposed of my family and I were subjected to police harassment, including an arrest of my brother at his job on a baseless claim that he was involved in a rape.

In addition, Patrolman Carmody and his partner made a practice of stopping me and directing racial slurs at me. An unusually intense patrol of my street was instituted and, on one occasion, a friend of mine was stopped while riding my minibike and an officer damaged it with a black jack.

I have read newspaper accounts of other similar activities engaged in by Officer Carmody and directed against black citizens.

Bruce E. Jimmerson
BRUCE E. JIMMERSON

Sworn to before me this
15th day of November, 1974

Dorothy Maxon
Notary Public

DOROTHY MAXON
Notary Public, State of New York
No. 52-6043360 - Suffolk Co.
Term Expires March 30, 1976

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

TERRY COLEMAN, et al.,

Plaintiffs,

vs.

JOHN V. N. KLEIN, et al.,

Defendants.

CIVIL ACTION
No. 73-C 1857

A F F I D A V I T

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

ELISHA BURCH, being duly sworn, deposes and says:

1. I am a black resident of Wyandanch, Suffolk County, New York, and a plaintiff in this action. I make this affidavit in support of my motion for a preliminary injunction.

2. That I suffered the violations of my rights described in paragraph 23B of the complaint.

3. That on January 9, 1974, I was stopped while traveling in my car and arrested by a police officer assigned to the First Precinct of the Suffolk County Police Department for the alleged non-payment of a $2.00 parking ticket, even though I have a document that indicates that this ticket was paid approximately one year ago.

4. After my arrest I was taken to the First Precinct with my hands cuffed behind my back. Upon my arrival at the precinct, the desk sargeant addressed me by my name indicating that my identity was widely known.

5. While I was being held at the First Precinct, I was confronted by defendant Patrolman Michael Carmody. An officer asked defendant Carmody if he knew me. Carmody responded: "Do I know him -- he's my protege. I'll give you guys credit -- you really have balls. Elisha taught me one thing -- to always carry one of these in my pocket." Defendant Carmody pulled out a knife and said: "The next time I catch you I'm going to cut you from ear to ear with this."

6. After threatening me with the knife defendant Carmody went to the side of the room, unfastened his trousers, pulled them down and said, "Look here, come and such my dick."

7. Defendant Carmody left the precinct after a period of approximately fifteen (15) minutes.

8. While I was at the precinct an officer other than defendant Carmody stated: "One thing about this job -- anytime you get garbage, it always comes back and I enjoy this job more and more because of that."

9. Because of my experiences described herein and the experiences of other members of my family described in the affidavit of my wife, Christine Burch, submitted herewith, I am fearful that my family and any others who choose to associate with us are in danger of future abuse and harassment because of my involvement with the instant action.

WHEREFORE, I respectfully pray that my motion for a preliminary injunction be granted.

_____
ELISHA BURCH

Sworn to before me this

day of , 1974.

_____
Notary Public

Exhibit D 36

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

TERRY COLEMAN, et al.,

Plaintiffs,

vs.

JOHN V. N. KLEIN, et al.,

Defendants.

CIVIL ACTION
No. 73-C. 1857

A F F I D A V I T

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

CHRISTINE BURCH, being duly sworn, deposes and says:

1. I am a black resident of Wyandanch, Suffolk County, New York, and a plaintiff in this action. I make this affidavit in support of my motion for a preliminary injunction.

2. That I suffered the violations of my rights described in paragraph 23C of the complaint.

3. That on January 17, 1974 I received a phone call from my daughter informing me that a man was beating my son Tyrone. Immediately thereafter I received three additional calls from other individuals who gave me the same information and advised me that I should go to the place of the incident. I sent to the scene and saw Tyrone penned inside a van. A girl named Morine was telling a man that he had no right to hit my son since Tyrone had not thrown a snowball at his vehicle. Morine told me that the man had hit my son and thrown him into the van because Tyrone would not tell him who had thrown the snowball. She also said that my son had not seen who threw it.

Exhibit 5

4. The man admitted putting his hands on Tyrone, claiming a right as a citizen to restrain my son and stated that he had called the police.

5. Two police officers, one of whom knew me, arrived on the scene. The patrolman who knew my identity said to the man, "You come over here with me because at least one of you is not damn stupid." He then made it clear he was calling me "damn stupid" and I told him that the man had beaten my thirteen-year-old son.

6. After the exchange described above I had my son get into my car, I talked to Morine and then started to go to my car. The same patrolman who called me "damn stupid" approached me and asked if I want to hit him, I asked if he wanted to hit me and he said "no," but then he did hit me. Tyrone approached from the car and protested. Police officers then choked my son and twisted his arm. Morine and I went between Tyrone and the patrolman, and I told my son to go back to the car. More officers arrived and they arrested my son and me.

7. While in police custody, my son and I were called numerous names and I was accused of being a Black Muslim. One patrolman threatened Tyrone. A sergeant called me "a black bitch" and he said, "Now you can put in another phoney suit against the County."

8. In addition, while we were in custody, the court was called and told that because there was no one to take my son home he should be confined to a shelter. This was asserted at a time when my husband, his sister and his sister's daughter were at the precinct.

Exhibit S 38

9. Because of the experiences described herein and the experiences of my husband, Elisha Burch, described in his affidavit submitted herewith, I am fearful that my family and any others who choose to associate with us are in danger of future abuse and harassment because of my involvement with the instant action.

WHEREFORE, I respectfully pray that my motion for a preliminary injunction be granted.

_____
CHRISTINE BURCH

Sworn to before me this
day of , 1974.

_____
Notary Public

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> "....we have concluded that the history of sec. 1443 (2) demonstrates convincingly that this subsection of the removal statute is available only to federal officers and to persons assisting such officers in the performance of their official duties (footnote omitted)."
>
> Greenwood v. Peacock, (384 U.S. 808 at 815).

See also People of the State of New York v. Galamison (342 F.2d 255, Part III, 262-263 [2d Cir.]).

The defendant does not allege that he is a federal officer or that he assisted a federal officer in the performance of his duties. He only alleges that he is a "victim of alleged police brutality" (Petition, par. 8).

Disposing of subdivision 2, we now turn to subdivision 1. "It is essential for removal that the prosecution be '(a)gainst any person who is denied or cannot enforce (one of his civil rights) in the courts of such State', and that the right must be one arising 'under any law providing for the equal civil rights of citizens of the United States.'" (Chestnut v. People of the State of New York, 370 F.2d 1 at 3 [2d Cir.].)

> "....not merely that rights of equality would be denied or could not be enforced, but that the denial would take place in the Courts of the State. The doctrine also required that the denial be manifest in a formal expression of state law. This requirement served two ends. It ensured that removal would be available only in cases where the predicted denial appeared with relative clarity prior to trial. It also ensured that the task of prediction would not involve a detailed analysis by a federal judge of the likely disposition of particular federal claims by particular State Courts. That task not only would have been difficult but it also would have involved federal judged in the unseemly process of prejudging their brethren of the state courts."
>
> Georgia v. Rachel, (supra, 384 U.S. 780 at 803, emphasis supplied.)

"Bad experiences with the particular court in question will not suffice." (People of the State of California v. Sandoval, 434 F.2d 635 [9th Cir.].)

The petition in this case merely alleges that the defendant cannot receive a fair trial in the state court. Nowhere does it allege, nor could he ever allege, that the denial of a fair trial is a formal expression of New York State law.

Rachel, 384 U.S. 780 at 805, where the court held that if the defendants established that they were ordered to leave the restaurant facilities solely for racial reasons and that the facilities were establishments covered by the Civil Rights Acts, the defendants were entitled to remove the prosecution under 28 U.S.C. sec. 1443 [1]).

"Where the allegations of the petition for removal, taken as true, do not support removal, there is no right to a hearing for factual development" (State of Georgia v. Spencer, 441 F.2d 397 at 398 [5th Cir.], Varney v. State of Georgia, 446 F.2d 1368 at 1369 [5th Cir.]); People v. Gardner 73 CR 231, decision by Judd,J. dated October 4, 1974).